

Town of Loomis Department of Public Works



**REQUEST FOR QUALIFICATIONS FOR
SURVEYING AND CIVIL DESIGN SERVICES FOR
DOWNTOWN MASTER PLAN PHASE 3**

Release Date: January 18, 2018

Submittal Deadline: February 15, 2018 at 2PM. (Pacific)

**Town of Loomis
3665 Taylor Road
Loomis CA 95650
(916) 652-1840**

REQUEST FOR QUALIFICATION
SUMMARY SHEET

1. Purpose of RFQ: Surveying and Civil Design Services for
Downtown Masterplan Phase 3.

2. Project Manager: Brit Snipes, Public Works Director
Town of Loomis
Department of Public Works
3665 Taylor Road
Loomis, CA 95650
Telephone (916) 652-1847

3. RFQ Contact: Brit Snipes, Public Works Director
Town of Loomis
Department of Public Works
3665 Taylor Road
Loomis, CA 95650
Telephone (916) 652-1840

4. SOQ Due-Date: February 15, 2018

5. Selection Method: One step RFQ

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INTRODUCTION AND PROJECT BACKGROUND

Loomis Public Works is soliciting Statements of Qualification (SOQs) from qualified firms for Surveying and Civil Design services for the Downtown Masterplan Phase 3. The project includes roadway, streetscape, landscaping, and drainage improvements.

The project will require a full service consultant with the ability to deliver a wide range of services including, but not limited to: topographic surveys, boundary survey, ALTA/ACSM Land Title Survey, preparation of legal descriptions and exhibit plats, construction staking, utility surveys, aerial photography, aerial mapping, transportation, preparation of plans specification and estimates for projects including, but not limited to; sidewalk, storm drain, new roads, overlay of existing roadways, striping, etc.

This project will require a full service consultant with the ability to deliver a wide range of services including, but not limited to: investigating proposed construction sites, determining if there are any potentially significant environmental impacts, preparing CEQA/NEPA documents and obtaining necessary permits for the project.

The firm should have knowledge of the Town/County Standards, CEQA and NEPA requirements.

This Request for Qualifications (RFQ) includes a description of the scope of work and RFQ instructions. There will not be a pre-submittal conference for this RFQ. Direct all inquiries regarding this RFQ to the contact person named below; do not contact any other Town staff. Information provided by other than the below contact should be considered invalid, and proposals which are submitted in accordance with such information may be declared non-responsive.

Direct all inquiries regarding this RFQ in writing to:

Attn: Brit Snipes
Town of Loomis
Public Works Department
3665 Taylor Road
Loomis, CA 95650
Phone: (916) 652-1840
Email: bsnipes@loomis.ca.gov

In the event that it becomes necessary to revise any part of this RFQ, a written addendum will be issued. Any amendment to this RFQ is valid only if in writing and issued by the Town of Loomis Public Works. Verbal conversations or agreements with any officer, agent, or employee of the Town that modify any terms or obligations of this RFQ are invalid.

1.0 REQUIREMENTS

1.1 PREVAILING WAGE

The services described herein are considered “public works” as defined by California Labor Code Section 1720 et seq. If a consultant is awarded a contract they shall be responsible for compliance with all applicable prevailing wage laws, as well as any and all applicable state or federal wage laws for services under the Consultant’s contract.

1.2 PRE-AWARD AUDIT

Town will certify indirect rates prior to contract award. Selected consultant shall provide documentation and access for the Town to review and approve indirect billing rates, including review of chart of accounts, expenditures per cost category, expenses not included in indirect rate, and overall financial system. Depending on the value of the contract, the consultant and sub-consultants will be required to submit an Exhibit 10-K form.

1.3 DISADVANTAGED BUSINESS ENTERPRISE

Consultants shall comply with the following document:

- 10-I – Notice to Proposers DBE Information
Each Proposer must submit a completed form
- 10-O1 – Consultant Proposal DBE Commitment
Each Consultant Awarded a Contract must complete
- 10-O2 – Consultant Contract DBE Information
Completion of this form is required for Final Payment
- 17-F – Final Report - Utilization of DBE, First-Tier Subcontractors

DBE goals for this contract shall be 3.0%. The consultant shall be required to meet the DBE goal or perform a good faith effort for each task order. Consultant shall be required to complete 10-O2 and 17-F for each task order and for the Entire Contract. The consultant must provide the 10-O2 and 17-F completed including, but not limited to, the DBE goal as stated above at the time of submittal of the proposal. Consultants who fail to provide the federal forms and meet the DBE goal or complete the Good Faith Effort forms will be rejected by the Town.

2.0 RFQ SCHEDULE

RFQ Issues

January 18, 2018

SOQ due	February 15, 2018
Evaluation of SOQs 2018	February 15 thru February January 28,
Interviews (if applicable)	March 1 thru March 9, 2018

3.0 SCOPE OF WORK

3.1 SCOPE

The Town desires to contract with a Consultant to provide Professional Civil Engineering Services and Professional Surveying Services (licensed in the State of California) and Professional Environmental Services for a wide range of services.

3.2 PROJECT TASKS

Specific services anticipated to be included are as follows:

A. Civil Design Services – the Consultant may be asked to design a wide range of projects including, but not limited to, sidewalk, new roadway, overlay existing roadway, cape seal, traffic signals, etc.

Deliverables:

- A, B and C Plans
- Technical Specifications
- Estimates
- Construction Plans
- Bid Documents

B. Topographic Survey

C. Plats and Legal Descriptions

D. Engineering Support Services - Consultant shall provide engineering support services to Town Staff including, but not limited to, preparation of plans and specifications, calculations, preparation of documents, permits, grant applications, storm water services, etc. Depending on the scope of the work, consultant may be requested to perform the services on-site at Town Hall on an as-needed and temporary basis.

E. Environmental Services – the Consultant to provide staff and services for the following:

- a. Preparations of all environmental impact documentation including CEQA and NEPA documents and studies. Federal funds will be administered through the Caltrans Local Assistance Program, and

Consultant shall complete all required technical analyses in Caltrans accepted format to facilitate review and approval. This work shall include, but will not be limited to:

- i. Project Initiation – This includes Preliminary Environmental Study (PES) Forms, following Caltrans' Local Assistance Procedures Manual, to identify required technical analysis.
 - ii. Project Report – This includes technical analysis identified on the PES Form. Consultant will also prepare an IS/MND, pursuant to CEQA, and publish appropriate notices with the State Clearinghouse. Consultant will coordinate with Caltrans for review and approval of technical analysis and obtain a Categorical Exclusion determination and completed Categorical Exclusion Form.
- b. Provide environmental construction inspection services as related to permit enforcement.
 - c. Coordinate with the design engineer, architect, general contractor, construction manager, geotechnical consultant, testing consultant, and applicable utilities and agencies.

F. Other Tasks -

- Aerial Photography/Mapping
- Utility Survey
- ALTA/ACSM Land Title Surveys
- Boundary Survey
- Legal Descriptions and Exhibit Plats
- Preparation of Federally Required Forms and Applications
- FEMA elevation certifications
- Transportation

4.0 MISCELLANEOUS

The Consultant shall support the Town in any post-completion dispute, rendering reasonable assistance, providing access to its records, but is not intended to retain independent experts.

Staff meetings of the Consultant shall not be considered as part of services for which payment will be made.

Time required by the Consultant to reach the designated work site shall not be considered part of the services for which payment will be made.

Costs associated with vehicle, phone and computer shall be included in Consultants hourly rate and no separate reimbursable request will be allowed.

Billing shall be on a four-week interval as designated by the Town.

There shall be no reimbursable expenses on this project unless approved in writing, in advance, by the Town.

The Town will not provide office space for consultant staff. If additional accommodations are needed by the Consultant, Consultant shall be responsible for obtaining the additional accommodations at no cost to the town.

5.0 PREPARATION OF STATEMENT OF QUALIFICATIONS – REQUIRED CONTENT

Each response to this RFQ shall include the information described in this section. Failure to include all of the elements specified may be cause for rejection. Additional information may be provided, but should be succinct and relevant to the goals of this RFQ. The document shall be organized as follows:

General Information (Items 5.1-5.8) - **not to exceed 5 pages** and shall be 8-1/2 inches by 11 inches in size.

All proposals shall contain the following elements, and in the order given:

5.1 COVER LETTER

- A. Name and Mailing Address of Firm (include physical location if mailing address is a P.O. Box); and
- B. Contact Person, Telephone Number and Fax Number; and
- C. A statement that the submitting firm shall perform the services as described in the **Scope of Work**; and
- D. SOQ's may be considered public information. Subsequent to conclusion of the SOQ process, all or part of any proposal may be released to any person or firm who may request it. Therefore, proposers may request in their Cover Letter to have any portion of their submittal treated as proprietary and not released as public information. However, proposers should be aware that all such requests may be subject to legal review and challenge.

5.2 SIGNATORY REQUIREMENTS

The Cover Letter must be signed by an officer empowered by the Consultant to sign such material and thereby commit the Consultant to the obligations

contained in the RFQ response. **Further, the signing and submission of a response shall indicate the intention of the vendor to adhere to the provisions described in this RFQ and a commitment to enter into a binding contract.** As such, submittals which are signed:

- For a **partnership**, shall be signed in the firm name by a partner or the Attorney-In-Fact. If signed by the Attorney-In-Fact, there shall be attached to the proposal a Power-Of-Attorney evidencing authority to sign proposals, dated the same date as the proposal and executed by all partners of the firm; OR
- For a **corporation**, shall have the correct corporate name thereon and the actual signature of the authorized officer of the corporation written (not typed) below the corporate name. The title of the office held by the person signing for the corporation shall appear below the signature of the officer; OR
- By an **individual** doing business under a firm name, shall be signed in the name of the individual doing business under the proper firm name and style.

5.3 EXECUTIVE SUMMARY

Provide a general overview of the firm's management style and attitude towards success and include a brief narrative of how the firm's professional approach will contribute to success.

5.4 FIRM'S ORGANIZATION CHART

Identify specific staff members to be assigned. Include the firm's organization structure, its constituent parts, and size variation of employees in the past 5 years.

5.5 PROPOSED STAFF

Provide a brief summary of the qualifications/experience of each team member, including subconsultant(s), preferably not more than one page per team member. Include the length of service with the firm and resume (resumes are to be included in an Appendix and are not part of the 5 page limit).

5.6 PROJECT ORGANIZATION CHART

Identify the services which would be completed by your firm's staff and those services provided by subconsultant(s). List any subconsultant(s) that your firm proposes to utilize.

5.7 EXPERIENCE OF FIRM

Provide a summary of the firm's experience with projects of similar size and scope; include the date and a brief description of the project.

5.8 REQUIRED STATEMENTS

Include statements of assurance regarding the following requirements:

- Non-substitution for the designated members of the proposed staff members and subcontractors (if any) without prior approval by the City (**Section 11.0**);
- Non-conflict of interest (**Section 12.5**);
- Non-collusion (**Section 12.6**); and
- Ability to fulfill the indemnification and insurance requirements contained in the Sample Contract (**Section 12.7 and Attachment B**). Please note that actual certificates of insurance are not required as part of your submittal.
- Non-Discrimination – Firm's compliance with the Non-Discrimination provisions and DBE requirements as described in **Section 7.5** of the Sample Contract (**Attachment C**).

6.0 SUBMITTAL INSTRUCTIONS

Submit **one (1) original** and **two (2) copies** of your SOQ not later than the time and date indicated on the cover page of this RFQ.

Proposals must be submitted **ONLY** to:

**Brit Snipes
Loomis Town Hall
Public Works Department
3665 Taylor Road
Loomis, CA 95650**

Proposals submitted to a location other than the above will not be considered duly delivered or timely. The Town of Loomis shall not be responsible for re-routing proposals delivered to a person or location other than that specified above.

Faxed and/or emailed proposals shall not be accepted.

Late submittals shall not be accepted or considered.

All submittals shall be submitted in a sealed envelope or container, and clearly marked with the RFQ title on the outside of the parcel. **Cost Proposals must be submitted in a separate sealed envelope and labeled as such.**

All submittals, whether selected or rejected, shall become the property of the Town of Loomis and will not be returned.

The Town of Loomis reserves the right to waive minor defects and/or irregularities in proposals, and shall be the sole judge of the materiality of any such defect or irregularity.

All costs associated with proposal preparation shall be borne by the Proposer.

7.0 EVALUATION CRITERIA

The following criteria and rating schedule will be used to determine the most highly qualified firm(s):

<u>Evaluation Criteria</u>	<u>Points Possible</u>
A. Experience with similar kinds of work.	25
B. Quality of staff for work to be done.	25
C. Familiarity with local, state and federal procedures.	25
D. Understanding of the work to be done.	10
E. Demonstrated technical ability.	10
F. References.	5
Total Possible Points	100

8.0 SELECTION PROCEDURE

SOQ's will be reviewed for responsiveness, and responsive SOQ's will be screened by a selection committee in accordance with the above criteria. The firm(s) submitting the most highly-rated SOQ's may be invited for interviews.

The Town intends to select one consultant for a term of three (3) years with an option for a two (2) year extension.

The Town reserves the right to reject any or all proposals, or to waive minor irregularities in said proposals, or to negotiate minor deviations with the successful firm.

9.0 ASSURANCE OF DESIGNATED PROJECT TEAM

Proposer shall assure that the designated project team, including subconsultants, is used for Town projects. Departure or reassignment of, or substitution for, any member of the designated team or Subconsultant(s) shall not be made without the prior written approval of the Town.

10.0 GENERAL TERMS & CONDITIONS

10.1 STANDARD CONTRACT

If a contract is recommended for award, the selected firm will be required to execute a Professional Services Agreement, a sample of which is included as **Attachment C**. Proposers are advised to carefully review the attached contract. Any proposed exceptions, alterations, or amendments shall be specified in your submittal, the nature of which may affect the evaluation of your submittal and the perceived ability to successfully award a contract to your firm/individual.

10.2 INDEPENDENT CONTRACTOR

At all times the Consultant shall represent himself/herself to be an independent contractor offering such services to the general public and shall not represent himself/herself, or his/her employees, to be an employee of the Town of Loomis. Therefore, the Consultant shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the Town of Loomis, its officers, agents, and employees, harmless from and against, any and all loss, cost (including attorney fees), and damage of any kind related to such matters.

10.3 OWNERSHIP OF INFORMATION

All reports, documentation, and material developed or acquired by the Consultant as a direct requirement specified herein shall become the property of the Town of Loomis. The Consultant shall agree and understand that all discussions with the Consultant and all information gained by the Consultant as a result of the Consultant's performance under the contract, shall be confidential and that no reports, documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the Town of Loomis.

10.4 NON-APPROPRIATION

The Town may terminate any resulting contract at the end of any fiscal year, June 30th, without further liability other than payment of debt incurred during such fiscal year, should funds not be appropriated by its governing body to continue services for which the contract was intended.

10.5 CONFLICT OF INTEREST

The Consultant shall warrant that no official or employee of the Town has an interest, has been employed or retained to solicit or aid in the procuring of the resulting contract, nor that any such person will be employed in the performance of such contract without immediate divulgence of such fact to the Town.

10.6 NON-COLLUSION

Firms submitting proposals shall warrant that their offer is made without any previous understanding, agreement or connection with any person, firm or corporation submitting a separate proposal for the same project and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action. This condition shall not apply to proposals which are submitted by firms who have partnered with others to submit a cooperative proposal that clearly identifies a primary contractor and the associated sub-contractors.

10.7 INDEMNIFICATION & INSURANCE REQUIREMENTS

Consultant shall comply with the Town's standard indemnification and insurance requirements as provided in the sample contract, **Attachment C**.

10.8 PROTESTS AND APPEALS

Any actual or prospective proposer, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may appeal to the Director of Public Works. The protest shall be submitted in writing to the Director of Public Works, within seven (7) calendar days after such aggrieved person or company knows, or should have known, of the facts giving rise thereto.

ATTACHMENT A

PROJECT DESCRIPTION

Provide survey, design and environmental clearance for the Loomis Downtown Masterplan Phase 3. Provide infill of curb gutter and sidewalk on Taylor Road from Horseshoe Bar Rd to King Rd. Provide full depth reconstruction and Class 1 Bike trail on Taylor Road from Del Oro High School to Lemons Ranch Drive. Design shall follow the design standards used in the recently constructed Downtown Master Plan Phase 2.

ATTACHMENT B

**CONSULTING SERVICES AGREEMENT BETWEEN THE TOWN OF
LOOMIS AND CONSULTANT**

CONTRACT FOR SERVICES

THIS CONTRACT is made on _____, 20__, by and between the TOWN OF LOOMIS ("Town"), and _____ ("Consultant").

WITNESSETH:

WHEREAS, the Town desires to enter into an On-Call Surveying and Civil Engineering Services Contract ;

WHEREAS, the Consultant has presented a proposal for such services to the Town, dated February 25, 2016, (attached hereto and incorporated herein as **Exhibit "A"**) and is duly licensed, qualified and experienced to perform those services;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. SCOPE OF SERVICES:

Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to completion of the services described in **Exhibit "A"**. This Contract and its exhibits shall be known as the "Contract Documents." Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control. If any portion of the Contract Documents shall be in conflict with any other portion, provisions contained in the Contract shall govern over conflicting provisions contained in the exhibits to the Contract.

Consultant enters into this Contract as an independent contractor and not as an employee of the Town. The Consultant shall have no power or authority by this Contract to bind the Town in any respect. Nothing in this Contract shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Consultant are employees, agents, contractors or subcontractors of the Consultant and not of the Town. The Town shall not be obligated in any way to pay any wage claims or other claims made against Consultant by any such employees, agents, contractors or subcontractors, or any other person resulting from performance of this Contract.

The Consultant agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

2. PERFORMANCE PERIOD

The services of Consultant are to commence upon execution of this Contract by the Town, and shall be undertaken and completed in accordance with the Schedule of Performance attached hereto and incorporated herein by this reference as **Exhibit "A."** Unless otherwise authorized by the Town in accordance with Section 2.C, all services under this Contract shall be completed by June 30, 2019.

Consultant's failure to complete work in accordance with the Schedule of Performance may result in delayed compensation as described in Section 3.

The Town Manager or his or her designee may, by written instrument signed by the Parties, extend the duration of this Contract for a period of 39 (thirty-nine) months in the manner provided in Section 18, provided that the extension does not require the payment of compensation in excess of the maximum compensation set forth in Section 4, Allowable Costs and Payments.

3. EXTENSIONS OF TIME:

Consultant may, for good cause, request extensions of time to perform the services required hereunder. Such extensions shall be authorized in advance by the Town in writing and shall be incorporated in written amendments to this Contract or the attached Work Program in the manner provided in Section 18.

4. ALLOWABLE COSTS AND PAYMENTS:

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultants Schedule of Fees Exhibit B. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the Schedule of Fees and identified in the Schedule of Performance and in the executed Task Order.

Specific projects will be assigned to Consultant through issuance of Task Orders.

After a project to be performed under this Contract is identified by Town, Town will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a Town Project Coordinator. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both Town and Consultant.

Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Schedule of Fees .

Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Schedule of Fees .

When milestone cost estimates are included in the approved Schedule of Performance, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

Consultant shall not commence performance of work or services until this Contract has been approved by Town, and notification to proceed has been issued by Town's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this Contract.

A Task Order is of no force or effect until returned to Town and signed by an authorized representative of Town. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by Town.

Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by Town's Contract Administrator of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number, project title and Task Order number. Credits due Town that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract, must be reimbursed by Consultant prior to the expiration or termination of this contract. Invoices shall be mailed to Town's Contract Administrator at the following address:

Town of Loomis
Brit Snipes Director of Public Works
3665 Taylor Road
Loomis CA, 95650

The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Contract.

The total amount payable by Town for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.

If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

Task Orders may not be used to amend this Contract and may not exceed the scope of work under this Contract.

The total amount payable by Town for all Task Orders resulting from this Contract shall not exceed \$ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.

All subcontracts in excess of \$25,000 shall contain the above provisions.

5. TERMINATION:

This Contract may be terminated by either party, provided that the other party is given not less than **30 (thirty)** calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate.

The Town may temporarily suspend this Contract, at no additional cost to Town, provided that the Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If Town gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Contract.

Notwithstanding any provisions of this Contract, Consultant shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of this Contract by Consultant, and the Town may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due the Town from Consultant is determined.

In the event of termination, the Consultant shall be compensated as provided for in this Contract, except as provided in Section 4C. Upon termination, the Town shall be entitled to all work, including but not limited to, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date in accordance with Section 7 hereof.

6. RETENTION OF RECORDS/AUDIT/AUDIT REVIEW

Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to Town.

All subcontracts in excess of \$25,000 shall contain the above provisions.

For the purpose of determining compliance with Public Contract Code section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, section 2500 et seq., when applicable and other matters connected with the performance of the Contract pursuant to Government Code 8546.7; Consultant, subconsultants, and Town shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the Contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, Town, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

7. SUBCONTRACTING:

None of the services covered by this Contract shall be subcontracted without the prior written consent of the Town, which will not be unreasonably withheld. Consultant shall be as fully responsible to the Town for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Consultant.

Consultant's obligation to pay its subconsultant(s) is an independent obligation from Town's obligation to make payments to the Consultant. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by Town. Any subcontract in excess of \$25,000 entered into as a result of this Contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

8. ASSIGNABILITY:

Consultant shall not assign or transfer any interest in this Contract whether by assignment or novation, without the prior written consent of the Town which will not be unreasonably withheld. However, claims for money due or to become due Consultant from the Town under this Contract may be assigned to a financial institution, or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the Town.

9. EQUIPMENT PURCHASE:

Prior authorization in writing, by Town's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by Town's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, Town shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit Town in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established Town procedures; and credit Town in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by Town and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by Town." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

All subcontracts in excess \$25,000 shall contain the above provisions.

10. COMPLIANCE WITH ALL LAWS:

Consultant shall comply with all applicable laws, ordinances, and codes of federal, State and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract. It shall be Town's responsibility to obtain all rights of way and easements to enable Consultant to perform its services hereunder. Consultant shall assist Town in providing the same.

The Consultant warrants to the Town that it is licensed by all applicable governmental bodies to perform this Contract and will remain so licensed throughout the progress of the Work, and that he has, and will have, throughout the progress of the Work, the necessary experience, skill and financial resources to enable it to perform this Contract.

11. PREVAILING WAGES

By executing this Contract Consultant warrants that it has registered with the Department of Industrial Relations in accordance with Labor Code section 1725.5.

The Work contemplated herein constitutes a public work within the meaning of Labor Code sections 1720 and 1771. The Consultant acknowledges that it has examined the prevailing rate of per diem wages as established by the California Director of Industrial Relations. The Consultant agrees to pay workers not less than the applicable prevailing rate of per diem wages, as set forth in these requirements and in accordance with Labor Code sections 1774. To the extent applicable, Consultant agrees to be bound by and comply with the provisions of sections 1777.5 et seq. of the Labor Code with respect to apprentices. Labor Code sections 1810 to 1815 thereof, inclusive are incorporated herein by reference.

The Consultant and each subcontractor shall keep an accurate payroll record which shows the name, address, social security number, correct work classification (in accordance with the wage decision), both straight and overtime worked each day and week, and hourly rate of pay, gross wages earned, deductions made and net wages paid to each journeyman, apprentice, worker or other employee paid by the Consultant /subcontractor in connection with the Work. These payroll records shall be certified and shall be made available at Consultant's principal office. These records shall be maintained during the course of the Work. The Consultant and all subcontractors shall make the certified payroll records available for inspection by Town representatives upon request and shall permit such representatives to interview employees during the work hours on the job site.

The Town shall notify the Consultant in writing of any discrepancies or violations that are discovered during such inspections. Written notification pursuant to this Section shall include the actions that will be necessary to resolve the discrepancies and/or violations. The Consultant shall be held entirely responsible for the prompt resolution of all non-compliances with the prevailing wage laws, including those pertaining to all subcontractors and any lower-tier subcontractors. The Consultant shall forfeit as penalty to the Town the amount specified by law for each calendar day or portion thereof for each worker (whether employed by the Consultant or any subcontractor) paid less than the stipulated prevailing rates for any work done under the Contract in violation of the provisions of the Labor Code and in particular, Section 1775.

To the extent applicable, Consultant and subcontractors shall maintain and furnish to the Department of Industrial Relations ("DIR"), a certified copy of each weekly payroll (but no less often than monthly), with a statement of compliance signed under penalty of perjury. Such certified payroll reports shall be transmitted electronically to the DIR after first registering at <https://apps.dir.ca.gov/eCPR/DAS/altlogin>.

The Town will not recognize any claims for additional compensation because of the payment of the prevailing wages. The possibility of wage increases is one of the elements to be considered by the Consultant in entering into the Contract, and will not under any circumstances, other than delays caused by the Town, or the Town's agents, be considered as the basis of a claim against the Town.

Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of their race, color, national origin or ancestry, physical handicap, mental condition, marital status, or sex of such person, except as provided in Section 12940 of the Government Code, and every Contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

12. CONFLICT OF INTEREST:

Consultant covenants that neither it, nor any of its employees, agents, contractors, subcontractors has any interest, nor shall they acquire any interest, direct or indirect, in the subject of the Contract, nor any other interest which would conflict in any manner or degree with the performance of its services hereunder. Consultant shall make all disclosures required by the Town's conflict of interest code in accordance with the category designated by the Town, unless the Town Manager determines in writing that Consultant's duties are more limited in scope than is warranted by the category designated by the Town code and that a narrower disclosure category should apply. Consultant also agrees to make disclosure in compliance with the Town conflict of interest code if, at any time after the execution of this Contract, Town determines and notifies Consultant in writing that Consultant's duties under this Contract warrant greater disclosure by Consultant than was originally contemplated. Consultant shall make disclosures in the time, place and manner set forth in the conflict of interest code and as directed by the Town.

Consultant hereby certifies that neither Consultant, its employees, nor any firm affiliated with Consultant providing services on this project prepared the plans, specifications, and estimate for any construction project included within this contract. An affiliated firm is one, which is subject to the control of the same persons through joint- ownership, or otherwise. Consultant further certifies that neither Consultant, nor any firm affiliated with Consultant, will bid on any construction subcontracts included within the construction contract. Additionally, Consultant certifies that no person working under this contract is also employed by the construction contractor for any project included within this contract. Except for subconsultants whose services are limited to materials testing, no subconsultant who is providing service on this contract shall have provided services on the design of any project included within this contract.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any Town employee. For breach or violation of this warranty, Town shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

13. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any Town employee. For breach or violation of this warranty, Town shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14. LOBBYING PROHIBITION

Consultant certifies to the best of his or her knowledge and belief that:

No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

15. STATEMENT OF COMPLIANCE: NONDISCRIMINATION

Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the

provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

The Consultant, with regard to the work performed by it during the Contract shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Contract covers a program whose goal is employment.

16. DEBARMENT AND SUSPENSION CERTIFICATION

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to Town.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

17. FUNDING REQUIREMENTS

It is mutually understood between the parties that this Contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of

both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

This Contract is valid and enforceable only, if sufficient funds are made available to Town for the purpose of this Contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or Town governing board that may affect the provisions, terms, or funding of this contract in any manner.

It is mutually agreed that if sufficient funds are not appropriated, this Contract may be amended to reflect any reduction in funds.

Town has the option to void the Contract under the termination clause, or by mutual agreement to amend the Contract to reflect any reduction of funds.

18. CHANGES IN TERMS:

Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written agreement between the parties hereto and shall be signed by the persons authorized to bind the parties hereto.

19. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

The goal for DBE participation for this contract is _____%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Town deems appropriate.

Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.

A DBE firm may be terminated only with prior written approval from Town and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting Town consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing,

managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier SubConsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier SubConsultants" is submitted to the Contract Administrator.

If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to Town's Contract Administrator within 30 days.

20. DISPUTES

Any dispute concerning a question of fact arising under an interim or post audit of this Contract that is not disposed of by agreement, shall be reviewed by Town's Chief Financial Officer. Not later than 30 days after issuance of the final audit report, Consultant may request a review by Town's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing. Neither the pendency of a dispute nor its consideration by Town will excuse Consultant from full and timely performance, in accordance with the terms of this Contract. Consultant and subconsultant contracts, including cost proposals and ICR, are subject

to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review.

If selected for audit or review, the Contract, proposal, Schedule of Performance and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, proposal, Schedule of Performance, and ICR shall be adjusted by Consultant and approved by the Town contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by Town at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs. The provisional ICR will apply to this contract and all other contracts executed between Town and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

21. INSPECTION OF WORK

Consultant and any subconsultant shall permit Town, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

22. SAFETY

Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued Town Safety Officer and other Town representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

Pursuant to the authority contained in Section 591 of the Vehicle Code, Town has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

Any subcontract entered into as a result of this Contract, shall contain all of the provisions of this Article.

Consultant must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

23. CONSULTANT TO PROVIDE INSURANCE:

Consultant shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this Contract, the policies of insurance specified in this Section. Such insurance must have the approval of the Town as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A VII (an NR rating is acceptable for Worker's Compensation insurance written with the State Compensation Insurance Fund of California).

Prior to execution of this Contract and prior to commencement of any work, the Consultant shall furnish the Town with certificates of insurance and copies of endorsements providing evidence of coverage for all policies required by the Contract. The Consultant and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the Town. The maintenance by Consultant and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of Consultant or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the Town as a material breach of this Contract. Approval of the insurance by the Town shall not relieve or decrease any liability of Consultant.

1. Worker's Compensation and Employer's Liability Insurance

a. Worker's Compensation - Insurance to protect the Consultant, its contractors and subcontractors from all claims under Worker's Compensation and Employer's Liability Acts, including Longshoremen's and Harbor Worker's Act ("Acts"), if applicable. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable state and Federal statutes and regulations. The Consultant shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in the Contract Documents.

b. Consultant shall provide a Waiver of Subrogation endorsement in favor of the Town, its officers, officials, employees, agents and volunteers for losses arising from work performed by the Consultant.

2. Commercial General Liability Insurance

a. The insurance shall be provided on form CG0001, or it's equivalent, and shall include coverage for claims for bodily injury or property damage arising out of premises/operations, products/completed operations, contractual liability, and subconsultant's work and personal and advertising injury resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than **[\$1,000,000.00]** per occurrence and **[\$2,000,000]** general and products/completed operations aggregates.

b. The commercial general liability insurance shall also include the following:

i. Endorsement equivalent to CG 2010 1185 naming the Town, its officers, officials, employees, agents, and volunteers as additional insureds. The endorsement shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.

ii. Endorsement stating insurance provided to the Town shall be primary as respects the Town, its officers, officials, employees and any insurance or self insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss, or judgment.

iii. Provision or endorsement stating that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3. Commercial Automobile Insurance

a. The insurance shall include, but shall not be limited to, coverage for claims for bodily injury or property damage for owned, non-owned, and hired automobiles resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than **[\$1,000,000.00]** per accident.

b. The commercial automobile insurance shall include the same endorsements required for the commercial general liability policy (see Section 16.B.2.b).

4. Professional Liability. The Consultant and its contractors and subcontractors shall secure and maintain in full force, during the term of this Contract and for five years thereafter, professional liability insurance policies appropriate to the respective professions and the work to be performed as specified in this Contract. The limits of such professional liability insurance coverage shall not be less than **[\$1,000,000]** per claim.

C. In addition to any other remedy the Town may have, if Consultant fails to maintain the insurance coverage as required in this Section, the Town may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the Town may deduct the cost of such insurance from any amounts due or which may become due Consultant under this Contract.

D. No policy required by this Contract shall be suspended, cancelled, terminated by either party, or reduced in coverage or in limits unless Consultant has provided thirty (30) days prior written notice by certified mail, return receipt requested, to the Town.

E. Any deductibles or self-insured retentions in excess of \$10,000 must be declared to, and approved by, the Town.

F. The requirement as to types, limits, and the Town's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

24. OWNERSHIP OF DATA:

It is mutually agreed that all materials prepared by the Consultant under this Contract shall become the property of the Town, and the Consultant shall have no property right therein whatsoever. Immediately upon termination, the Town shall be entitled to, and the Consultant shall deliver to the Town, all data, drawings, specifications, reports, estimates, summaries and other such materials as may have been prepared or accumulated to date by the Consultant in performing this Contract which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to the Town which is in the Consultant's possession.

Notwithstanding the forgoing, Consultant is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by Town of the machine-readable information and data provided by Consultant under this contract; further, Consultant is not liable for claims, liabilities, or losses arising out of, or connected with any use by Town of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by Consultant.

By written agreement, Town may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

Additionally, it is agreed that the parties intend this to be a contract for services and each considers the products and results of the services to be rendered by Consultant hereunder (the "Work") to be a work made for hire. Consultant acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of the Town.

25. CLAIMS FILED BY TOWN'S CONSTRUCTION CONTRACTOR

If claims are filed by Town's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with Town's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

Consultant's personnel that Town considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from Town. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.

Services of Consultant's personnel in connection with Town's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

26. MATERIALS CONFIDENTIAL:

All of the materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the Town, except by court order.

27. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

28. EVALUATION OF CONSULTANT

Consultant's performance will be evaluated by Town. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

29. RETENTION OF FUNDS

Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.

No retainage will be withheld by the Town from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

30. NOTICE

All notices that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:

Town:

Consultant:

31. CONTRACT: ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties relative to the services specified herein and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Contract. There are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Contract, except those contained in or referred to in the writing.

32. WARRANTIES AND RESPONSIBILITIES - CONSULTANT

Consultant agrees and represents that it is qualified to properly provide the services set forth in **Exhibit "A"** in a manner which is consistent with the generally accepted standards of Consultant's profession.

Consultant agrees and represents that the work performed under this Contract shall be in accordance with applicable federal, State and local law in accordance with Section 17A hereof.

Consultant shall designate a project manager who at all times shall represent the Consultant before the Town on all matters relating to this Contract. The project manager shall continue in such capacity unless and until he or she is removed at the request of the Town, is no longer employed by Consultant, or is replaced with the written approval of the Town, which approval shall not be unreasonably withheld.

Consultant shall provide corrective services without charge to the Town for services which fail to meet the above professional and legal standards and which are reported to Consultant in writing within sixty (60) days of discovery. Should Consultant fail or refuse to perform promptly its obligations, the Town may render or undertake performance thereof and the Consultant shall be liable for any expenses thereby incurred.

33. LIABILITY OF CONSULTANT NEGLIGENCE:

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally-accepted standards of the Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The Town shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

34. INDEMNITY AND LITIGATION COSTS:

Consultant shall indemnify, defend, and hold harmless the Town, its officers, officials, agents, and employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees, arising in any manner by reason of negligent acts or negligent failure to act, errors, omissions or willful misconduct incident to the performance of this Contract on the part of Consultant except such loss or damage which was caused by the [active negligence, ***{only if contract involves design services in connection with a public works project - see Civil Code §2782(b), §2783}***] sole negligence, or willful misconduct of the Town. The provisions of this paragraph shall survive termination or suspension of this Contract.

35. MISCELLANEOUS PROVISIONS:

Consultant shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, county and municipal laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work.

This Contract shall be interpreted and governed by the laws of the State of California.

Any action arising out of this Contract shall be brought in Placer County California, regardless of where else venue may lie.

In any action brought by either party to enforce the terms of this Contract, each party shall be bear responsibility for its attorney's fees and all costs regardless of whether one party is determined to be the prevailing party.

TOWN OF LOOMIS

By: _____

Title:

ATTEST:

By: _____

_____, Town Clerk

APPROVED AS TO FORM:

By: _____

Town Attorney

CONSULTANT

By: _____

Title:

EXHIBIT 2016 RFQ

EXHIBIT __

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

[Labor Code § 1861]

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANT

By:

[Title]

